



Civil Resolution Tribunal

Date Issued: December 9, 2022

File: ST-2021-009694

Type: Strata

Civil Resolution Tribunal

Indexed as: *Zhou v. The Owners, Strata Plan VR 1960*, 2022 BCCRT 1323

BETWEEN:

ZIYING ZHOU

APPLICANT

AND:

The Owners, Strata Plan VR 1960

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about a \$200 noise bylaw fine.

2. The applicant, Ziyang Zhou, also known as Emily Zhou, co-owns strata lot 188 (SL188) in the respondent strata corporation, The Owners, Strata Plan VR 1960 (strata). Mrs. Zhou is self-represented. A strata council member represents the strata.
3. Mrs. Zhou says the strata has unfairly fined her \$200 for contravention of the strata's noise bylaw. She says she did not contravene the bylaw and seeks an order that the strata "withdraw" the bylaw fine, which I find means to remove the bylaw fine from the account of SL188.
4. The strata disagrees and asks that Mrs. Zhou's claim be dismissed.
5. As explained below, I find in favour of Mrs. Zhou.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Has the strata failed to adequately investigate noise concerns relating to SL188?
 - b. If so, did the strata comply with *Strata Property Act* (SPA) section 135 before fining Mrs. Zhou for contravening its noise bylaw?

BACKGROUND, REASONS AND ANALYSIS

11. As the applicant in a civil proceeding such as this, Mrs. Zhou must prove her claims on a balance of probabilities, meaning “more likely than not”. I have considered all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision.
12. The strata plan shows the strata consists of 188 units comprising both townhouse-style and apartment-style strata lots. It was created in August 1987 under the *Condominium Act* and continues to exist under *Strata Property Act* (SPA). Mrs. Zhou’s SL188 is an apartment-style strata lot located on the fourth and top floor of a building, directly above strata lot 182.
13. The strata filed numerous bylaw amendments with the Land Title Office (LTO) on July 16, 2019, which I find are the applicable bylaws to this dispute. Bylaw 2.1 addresses noise. The relevant parts of bylaw 2.1 are:
 - 2.1 A resident or visitor must not use a strata lot, the common property or common assets in a manner that, directly or indirectly:
 - (a) unreasonably interferes with the use or enjoyment of another strata lot ...,

(b)causes a nuisance or hazard to another person,

(c)causes unreasonable noise....

The noise complaints

14. It is undisputed that the strata wrote to Mrs. Zhou in November 2019 identifying several noise complaints received from the neighbour directly below SL188 for incidents that allegedly occurred between September 2018 and October 2019. It is undisputed the neighbour was a strata council member and later became the strata council president. The letter stated the noises complained of may violate bylaw 2.1 and that the strata could impose fines if Mrs. Zhou did not respond with 21 days. Mrs. Zhou provided her response and asked for a council hearing to contest the noise allegations. The hearing was held at the beginning of the January 23, 2020 strata council meeting and shows the strata council decided not to issue any fines. The strata wrote to Mrs. Zhou on February 20, 2020 and confirmed fines would not be imposed.
15. Over 1 year later, the strata received new noise complaints from the same neighbour for incidents that allegedly occurred between December 2018 and March 2021. The neighbour provided the strata with a list of a “select few” of their approximately 160 logged noise complaints which largely identified “stomping”, “bumping”, “hammering” and “foot dragging” sounds. On April 16, 2021, the strata manager wrote to Mrs. Zhou reproducing the “select” noise complaints provided by the neighbour. The letter stated the noises complained of may violate bylaw 2.1 and that the strata was considering whether fines of \$200 per violation would be imposed. Mrs. Zhou was given an opportunity to answer the complaint and was informed the strata would make its decision on fines if she did not respond within 21 days. Mrs. Zhou again requested a council hearing to contest the noise allegations. Although the date of Mrs. Zhou’s response is not in evidence, it is clear from the evidence that the hearing took place on May 20, 2021.
16. On May 26, 2021, the strata manager wrote to Mrs. Zhou and thanked her for attending the May 20, 2021 hearing. The letter advised that the strata would “investigate the noise complaints” and let Mrs. Zhou know of its findings. Mrs. Zhou emailed the strata

manager on the same day and asked the strata manager how long the strata was expected to take to complete its investigation. It is undisputed that Mrs. Zhou did not receive a response to her May 26, 2021 email. The June 24, 2021 strata council meeting minutes clearly show the strata received Mrs. Zhou's May 26, 2021 email and voted to impose a \$200 fine.

17. On August 9, 2021, the strata manager wrote to Mrs. Zhou advising her of the strata council's June 24, 2021 decision to fine her \$200. Mrs. Zhou again requested a council hearing noting she was not informed of what investigation took place, nor the outcome of the investigation. The hearing was held on September 2, 2021 at which time Mrs. Zhou provided a written statement about why she objected to the fine. Relevant parts of her statement identify the lack of investigation as the strata promised, and the lack of specifics about what constitutes unreasonable noise.
18. The outcome of the September 2, 2021 hearing was that a strata council member was asked to review the noise issues and provide the strata council with their findings. The strata council member provided a very detailed written report, including copies of correspondence, and appears to have discussed the noise issues with both Mrs. Zhou and the neighbour. The strata council member concluded, among other things, that the complaints were "mostly exaggerated and excessive" and that the strata council was "unable to conclusively prove the level and source of all the noise incidents as alleged".

Has the strata failed to adequately investigate noise concerns relating to SL188?

19. As noted, bylaw 2.1 says an owner must not use a strata lot in a way that unreasonably interferes with the use and enjoy another strata lot, causes a nuisance or hazard to another person, or causes unreasonable noise.
20. SPA section 26 requires the strata council to exercise the powers and perform the duties of the strata, which include bylaw enforcement. The strata council is required to act reasonably when carrying out these duties.

21. The SPA does not set out any procedures for assessing bylaw complaints. I also find the bylaws are silent on this process. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the BC Supreme Court stated that the SPA allows strata corporations to deal with complaints of bylaw violations as it sees fit, as long as it complies with the principles of procedural fairness and its actions are not significantly unfair to any person who appears before it (paragraph 52). In other words, the strata must be reasonable in how it assesses bylaw complaints.
22. The strata's investigation must also be objective, as established in *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33. In *Triple P*, the court found that nuisance in the strata context is an unreasonable interference, such as noise, with an owner's use and enjoyment of their property. Whether an interference is unreasonable depends on several factors, such as its nature, severity, duration and frequency. The interference must also be substantial such that it is intolerable to an ordinary person. (See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64).
23. I will first consider whether the strata has treated Mrs. Zhou significantly unfairly as found in *Chorney* and described in other caselaw discussed below.
24. The CRT has jurisdiction to determine claims of significant unfairness. (See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119).
25. The courts and the CRT have considered the meaning of "significant unfairness" in many contexts and have equated it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable. (See also *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173).
26. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations could be considered a relevant factor in assessing significant unfairness. The following test from *Watson* applies:

- a. What is or was the expectation of the affected owner?
 - b. Was the owner's expectation objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
27. In this case, I find Mrs. Zhou had an objectively reasonable expectation that the strata would investigate the noise complaint to determine if it was contrary to bylaw 2.1. This is especially true given the strata's May 2021 letter to Mrs. Zhou expressly stating it would investigate the noise complaints and report its findings to her.
28. However, there is no evidence the strata conducted any investigation before imposing the fine, let alone an objective one. Rather, the evidence shows the strata simply imposed the \$200 noise bylaw fine on June 24, 2021, even after it acknowledged Mrs. Zhou's correspondence enquiring how long the strata's investigation would take. Therefore, in the circumstances of this dispute, I find the strata treated Mrs. Zhou significantly unfairly when it imposed the bylaw fine without completing an investigation.
29. For this reason, I order the strata to remove the \$200 noise bylaw fine it imposed against Mrs. Zhou and SL188 on June 24, 2021.
30. Given my conclusion above, I need not consider whether the strata followed the procedural requirements of SPA section 135 before imposing the fine.

CRT FEES AND EXPENSES

31. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason not to follow this general rule in this dispute. Mrs. Zhou was the successful party and paid \$225 in CRT fees, so I order the strata to reimburse Mrs. Zhou this amount.
32. Neither party claimed dispute-related expenses, so I make no order for reimbursement.

33. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Zhou.

ORDERS

34. I order the strata to immediately remove the \$200 noise bylaw fine imposed June 24, 2021 from the account of SL188.

35. Within 15 days of the date of this decision, I order the strata to pay Mrs. Zhou \$225 for CRT fees.

36. Mrs. Zhou is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

37. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

J. Garth Cambrey, Vice Chair